

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
97-CR-133-A

DONALD BENJAMIN,

Defendant.

Defendant Donald Benjamin has filed a *pro se* motion for resentencing pursuant to 18 U.S.C. § 3582 and the First Step Act of 2018, Pub. L. N. 115-391, § 404, 132 Stat. 5194 (Dec. 21, 2018). Defendant Benjamin was sentenced to 40 years of imprisonment and he acknowledges that his sentence was imposed pursuant to penalties at 21 U.S.C. § 841(b)(1)(C). Dkt. No. 935, pp. 3-5. His sentence was therefore derived without reference to any statutory mandatory-minimum term of imprisonment, and it is clear that his Sentencing Guidelines advisory range would remain the same under current Sentencing Guidelines. See Dkt. Nos. 867, 877 at pp. 45-46, 68-69. As a result, no sentence reduction is authorized under First Step Act § 404(a) and § 3582.

The Court has considered defendant Benjamin's other arguments in support of a sentence reduction and finds that they are all without merit. See Dkt. No. 935. For example, the defendant argues that a prior felony conviction of his was insufficiently serious to provide a basis to enhance his sentence. But the First Step Act amendment upon which the defendant relies does not authorize any sentencing relief

for him because he was sentenced before enactment of the First Step Act. First Step Act § 401(c). For these reasons, the defendant's motion for resentencing is denied.

IT IS SO ORDERED.

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: November 4, 2019